

In the Matter of Merchant Mariner's Document No. Z-991498 and all other Seaman Documents
Issued to: WILLIAM BROWN, Jr.

DECISION OF THE COMMANDANT

UNITED STATES COAST GUARD
1236

WILLIAM BROWN, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 15 August 1960, an Examiner of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS GULF BANKER under authority of the document above described, on or about 2 March 1959, Appellant wrongfully had marijuana in his possession.

At the hearing, Appellant was represented by nonprofessional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Robert Alexander (wiper), the testimony of three U. S. Customs officers, and several exhibits.

In defense, Appellant offered in evidence his testimony and that of Freddie Banks (wiper). Both men denied having any knowledge concerning the marijuana found on the ship and they denied the truth of testimony by wiper Alexander that he found them with marijuana in their room.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On a foreign voyage including the date of 2 March 1959, Appellant was serving as a wiper on board the United States SS GULF BANKER and acting under authority of his document. On 2 March the ship was in the port of Houston, Texas after returning from the voyage.

Appellant and the two other wipers, Banks and Alexander, shared a room on the ship. During the course of the voyage, Alexander once entered the room and found scraps of marijuana on the deck. Two other times he detected an odor in the room which smelled like burning marijuana. Nobody else was in the room on these three occasions.

On the evening of 1 March 1959, Alexander entered the room when Appellant, Banks and another crew member were present. There was a quantity of marijuana on a piece of newspaper on Appellant's bunk. This was reported to the Master.

On the morning of 2 March, U. S. Customs officers boarded the ship and found two packages of marijuana in the laundry room wrapped in paper from Brownsville, Texas and Bogota, Colombia newspapers. Pieces of paper from the same editions of the same newspapers were found in the wipers' room on Banks' bunk.

Sweeping of about one grain each were taken from the khaki trousers Appellant was wearing and his other clothing. Both of these samples contained marijuana. Analysis of sweepings from other clothing was negative as to marijuana with the possible exception of one fragment of marijuana in a work jacket which Banks, at the hearing, denied was his.

The U. S. Attorney declined to prosecute due to the small amount of marijuana found in the clothing and the fact that these men were seamen.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

- I. No jurisdiction is shown.
- II. There is no reliable, substantial and probative evidence to show knowledge of, or posesion of, any greater quantity of marijuana than the one grain found in Appellant's pants.
- III. The Examiner was inconsistent in accepting the testimony of Alexander relative to Appellant was rejecting the same testimony as to Banks. (The case against Banks was dismissed.)
- IV. The Examiner erred in considering Alexander an expert as to identifying marijuana.
- V. The Examiner erred in finding that the table in the room, from which sweepings were taken, was used only by Appellant.
- VI. The Examiner erred in admitting testimony by Alexander concerning incidents which occurred prior to 2 March.

In conclusion, it is requested that the decision be reversed or that Appellant be given credit,

toward the three years before application can be made for a new document, for the 17 months the hearing was in progress.

APPEARANCE: Lt. William T. Sode, USCG, of Counsel.

OPINION

Point II on appeal presents the critical issue. The other contentions raised will be disposed of briefly before discussing the adequacy of the evidence to prove wrongful possession of marijuana.

I. A document is required in order to be a crew member on a foreign voyage. Hence, jurisdiction was established by the fact that Appellant was acting under the authority of his document.

III. This record does not show that Alexander's testimony was rejected as to Banks. The above findings of fact indicate a difference as to whether marijuana was found in the clothing of the two seamen. In any event, the decision in Banks' case is not controlling herein.

IV. Alexander testified that he had often seen marijuana. This was adequate to establish the nature of the substance on Appellant's bunk.

V. This error by the Examiner is not material to the outcome.

VI. This evidence was admissible as circumstantial evidence to corroborate evidence of wrongful possession on 2 March.

POINT II

In order to sustain the allegation of wrongful possession of marijuana where such minute quantities are involved as were disclosed by the sweepings taken from Appellant's clothing, there must be evidence of supporting facts or circumstances which indicate the probability that the seaman had knowledge of the physical possession of marijuana fragments. The statements that a mere scintilla of evidence does not constitute reliable, probative and substantial evidence apply to the quality of evidence produced to prove something rather than to the quantity of a particular substance involved.

In this case, the supporting facts as to wrongful possession on 2 March are supplied by the testimony of Alexander and the finding of the marijuana in the laundry room wrapped in pieces of the same newspapers as were found in the wipers' room. Alexander's testimony that the substance he saw on Appellant's bunk on 1 March was marijuana is corroborated by the evidence that the substance in the laundry room was proved by analysis to be marijuana.

It is my opinion that this constitutes reliable, probative, and substantial evidence reasonably leading to the conclusion that the sweepings were partially the remains of larger quantities of

marijuana which Appellant knew had recently been in his clothing. Consequently, he had good cause to believe that the sweepings contained marijuana and, therefore, he was guilty of wrongful possession of marijuana on 2 March as alleged.

The order of revocation will be affirmed without granting any credit for the time the hearing was in progress because Appellant retained possession of his document until the Examiner's decision was served.

ORDER

The order of the Examiner dated at Houston, Texas, on 15 August 1960, is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 8th day of May 1961.